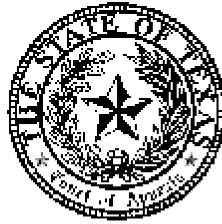
Affirmed and Opinion filed June 28, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01096-CR

SOLOMON RODRIQUEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 1
Galveston County, Texas
Trial Court Cause No. 184,717

O P I N I O N

A jury found appellant guilty of assault and assessed punishment at 365 days' confinement in the Galveston County jail. Appellant appeals, asserting four points of error. First, appellant complains that a fatal variance existed between the charging instrument and the evidence presented at trial. In appellant's second and third points of error, he argues that the evidence was legally insufficient to support a finding that appellant struck the complainant with his hand. Lastly, in his fourth point of error, appellant argues that the evidence was factually insufficient to support a finding that appellant struck the complainant with his hand. We affirm.

Appellant was charged by information with the misdemeanor offense of assault causing bodily injury. The information alleges that appellant committed the assault by striking the

complainant with his "hand." Appellant argues that a fatal variance exists between the information and the evidence produced at trial because the evidence presented at trial demonstrates that appellant struck the complainant with a pool stick, and there was no evidence that appellant struck the complainant with his hand. Appellant acknowledges that there was testimony that he punched the complainant, but would have this Court find that such a punch does not amount to evidence that appellant assaulted the complainant with his "hand." We will not engage in such hypercritical reasoning. It is well established in Texas jurisprudence that a fist and hand are interchangeable and viewed as the same. *Allen v. State*, 36 Tex. Crim. 436, 437, 37 S.W. 738, 738 (1896); *Carroll v. State*, 698 S.W.2d 278, 279 (Tex. App.—Fort Worth 1985, pet. ref'd). We overrule appellant's first point of error.

In his second and third points of error, appellant complains that the evidence was legally insufficient to support a finding that appellant struck the complainant with his hand. We disagree.

In reviewing legal sufficiency challenges, appellate courts are to view the evidence in the light most favorable to the prosecution, overturning the lower court's verdict only if a rational trier of fact could not have found all elements of the offense beyond a reasonable doubt. *Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2871, 2879, 61 L.Ed.2d 560 (1979)). "[I]f any evidence establishes guilt beyond a reasonable doubt, the appellate court may not reverse the fact finder's verdict on grounds of legal insufficiency." *Arthur v. State*, 11 S.W.3d 386, 389 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

Appellant admits that testimony at trial indicated that he punched the complainant. As previously discussed we refuse to engage in hypercritical reasoning that would have us distinguish between a hand and a fist. *See Carroll*, 698 S.W.2d at 279. This testimony, standing alone, is legally sufficient evidence to support the jury's finding that appellant assaulted the complainant with his hand. Accordingly, we overrule appellant's second and third points of error.

Lastly, in his fourth point of error, appellant asserts that the evidence was factually

insufficient to support the jury's finding that appellant assaulted the complainant with his hand. We disagree.

In reviewing factual sufficiency challenges, appellate courts must determine "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Evidence is factually insufficient if, 1) it is so weak as to be clearly wrong and manifestly unjust; or 2) the adverse finding is against the great weight and preponderance of the available evidence. *Id*. The *Johnson* court reaffirmed the requirement that "due deference must be accorded the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence." *Id*. at 9.

It is undisputed that a witness testified at trial that appellant punched the complainant in the back of her head three or four times with his fist. Furthermore, the complainant testified that after being struck by appellant with a pool stick, she escaped his attack momentarily, only to be caught in the parking lot and struck in the back of her head. The evidence that appellant struck the complainant with his hand is not so weak as to be clearly wrong and manifestly unjust, or against the great weight and preponderance of the available evidence. *See Id.* at 11. Accordingly, we overrule appellant's fourth point of error.

The judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 28, 2001.

Panel consists of Justices Edelman, Frost, and Senior Chief Justice Murphy.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Chief Justice Paul C. Murphy sitting by assignment.